

DEC 15 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID DERMAINE JONES, a.k.a.  
POPCORN,

Defendant - Appellant.

No. 08-50167

D.C. No. 2:05-cr-01070-DSF

MEMORANDUM \*

Appeal from the United States District Court  
for the Central District of California  
Dale S. Fischer, District Judge, Presiding

Submitted December 1, 2008 \*\*

Before: GOODWIN, CLIFTON and BEA, Circuit Judges.

This is an appeal from the district court's order denying appellant's request that his sentence be reduced on the basis of the disparity between sentences for crack and powder cocaine.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The motion for summary disposition is granted because the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Appellant received the mandatory minimum sentence for his conviction for distribution of cocaine base in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(A)(iii). Appellant's contention that he should be re-sentenced pursuant to 18 U.S.C. § 3582(c)(2) based on amendment 706 to the United States Sentencing Guidelines fails because that amendment is inapplicable where defendant has received a mandatory minimum sentence. *See Kimbrough v. United States*, 128 S. Ct. 558 (2007). Accordingly, we summarily affirm the district court's judgment.

**AFFIRMED.**